



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,652	09/17/2003	Eileen Roehr	88265-14012	3808
28765	7590	05/12/2005	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 05/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,652

Applicant(s)

ROEHR ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 7-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The 112 first paragraph rejection of claims 1-9 is hereby withdrawn.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is vague and indefinite; it is unclear how claim 4 further limits claim 1 when the range of moisture content is outside and broader than the range of claim 1.

Claims 1, 4, 7-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pflaumer et al.

Pflaumer et al disclose a dual-textured cookie products having a storage-stable plurality of textures. The cookies comprise discrete regions having crisp texture and discrete regions having chewy texture. The cookies are baked from dough products which can be packaged and stored refrigerated or frozen. The cookies have a soft chewy texture on the inside and a crispy texture on the outside. (see col. 3 lines 51-50-57, col. 4 lines 30-35)

Pflaumer et al do not disclose the percentage of the central portion and the percentage of the outer portion, the moisture content of the central and outer portions, the dimensions of the central and outer portions, the stress level of the outer and central portions, the average moisture content of the cookies and the time at which the moisture content is obtained.

Pflaumer et al disclose cookies having chewy central portion and crispy outer portion. The limitation of obtaining from a chilled or frozen state and maintaining in a controlled temperature is a processing limitation which does not determine the

Art Unit: 1761

patentability of the product. The end product is a baked product having a dual texture and Pflaumer et al disclose such product. In absence of showing of unexpected result or criticality, the moisture content is a result-effective variable which can be determined by one skilled in the art. Pflaumer et al require that the central portion is chewy and the outer portion is crispy. Thus, it would have been obvious to one skilled in the art to make the moisture content of the central portion to be different from the outer portion and to obtain a moisture content that would give the properties of being chewy and crispy. Applicant has not shown any thing unexpected over the claimed moisture content other than to make the cookies having a dual texture of chewy and crispy. As to the time at which the moisture is obtained, the Pflaumer et al dough is made to have the dual texture; thus, it is obvious the cookies will have the different texture shortly after baking when the cookies are cooled. Furthermore, the time to obtain the required moisture content is a processing parameter which does not lead to a difference in the product. The Pflaumer et al product has the dual texture during extended storage; thus, it is obvious the product has the dual texture for at least about 2-8 hours after baking. It would have been obvious to vary the percentage and dimension of the different portions depending of the degree of textural difference desired. Since the cookies have different textural portions and the portions being chewy and crispy as claimed, it is obvious the stress level is the same as claimed. It would have been obvious to vary the moisture content of the cookies depending on the texture wanted. As the cookie being made from the single dough, this is a difference in the processing and does not determine the patentability of the product. Whether it is a single dough or

Art Unit: 1761

not a single dough, the final product is still a cookie. The dough in Pflaumer et al has different dough portions but it is still a single dough because the different portions are laminated to make a single dough. It would have been obvious to make the cookies in any shape having any dimension; this is an obvious matter of choice.

Reference A3 on the IDS filed Feb. 1, 2005 was not considered because there is no English abstract or discussion of relevancy.

Applicant's arguments with respect to claims 1, 4 and 7-23 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 2, 2005


LIEN TRAN
PRIMARY EXAMINER
Group 1702